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AE & EW

769-222 Div. 4 (ITW 8542.04)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Steven Ausnit

Art Unit: 3727

Serial No.: 10/629,119

Examiner: Jes Pascua

Filed: July 29, 2003

For: **PROCESS AND APPARATUS FOR FORMING  
PACKAGING BAGS WITH A FASTENER**

**TRANSMITTAL OF APPEAL BRIEF**

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S I R:

Enclosed is an original brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This Appeal Brief is being filed pursuant to the Notice of Appeal dated July 21, 2006, with an apparent Office filing date of July 24, 2006. A check for the Rule 17 fee for filing an appeal brief is enclosed herewith. Any other fees may be charged to Deposit Account 50-1145, Order No. 769-222 Div. 4.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

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Application Serial No. 10/629,119

Filed: July 29, 2003

Art Unit: 3727

Examiner: Jes Pascua

**PROCESS AND APPARATUS FOR  
FORMING PACKAGING BAGS WITH A FASTENER**

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Ex parte: Steven Ausnit

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BRIEF FOR THE APPELLANT

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ITW Ref.: 8542.04  
PH Ref.: 769-222 Div. 4

I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

The presently pending claim was copied from U.S. Patent No. 6,290,391 for the purpose of provoking an interference. No interference has been declared.

A Notice of Appeal dated September 5, 2006 was accorded an Office filing date of September 11, 2006 for related application serial no. 10/629,313 (attorney docket 769-222 Div. 5, client docket 8542.05).

An appeal brief was accorded an Office filing date of April 14, 2004 for related application serial number 10/167,809 (attorney docket 769-222 Cont., client docket 8542.60). This application was thereafter allowed and issued as U.S. Patent No. 6,820,395.

III. STATUS OF CLAIMS

Claim 40 is rejected and is being appealed herein.

IV. STATUS OF AMENDMENTS

No amendment was filed in response to the final Office Action of July 7, 2006. The Notice of Appeal was filed July 21, 2006 with an apparent Office filing date of July 24, 2006.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 40 relates to a method of making a package comprising a package body defining a package interior (Fig. 25, element 30; page 16, last line – page 17, line 7); a zipper closure comprising a first mating profile and a second mating profile extending along a first edge of the package body, the zipper closure providing access to the interior (Fig. 25, elements 10, 12; page 17, line 3), a slider device operably mounted on the zipper closure, the slider device interlocking the first mating profile with the second mating profile when the slider device is moved in a first direction and for disengaging the first mating profile from the second mating profile when the slider device is moved in a second opposite direction (Fig. 25, element 9; page 17, line 4), and a tamper-evident structure at least partially encasing the zipper closure (Fig. 25, element 126; page 17, lines 3 and 4); the method comprising: (a) providing the package body having an interior surface and defining the package interior (bag 30 of Fig. 25 includes a package interior and an interior surface defining a package interior); (b) attaching the zipper closure to the interior surface of the package body (the zipper closure formed by profiles 10, 12 in Figure 25 is attached to the interior of the bag 30; page 17, line 3); (c) mounting the slider device onto the zipper closure (slider 9 in Figure 25 is mounted on the zipper closure formed by profiles 10, 12; page 17, lines 3 and 4); (d) forming the tamper-evident structure over the zipper closure and the slider device with the package body by (film extension 126 in Figure 25 is formed over the zipper closure formed by profiles 10, 12 and slider 9, subject to the forming of the opening in step ii below; page 17, line 4): (i) sealing the package body above the zipper closure (the film extension 126 in Figure 25 is formed by sealing the package body above the zipper closure; page 17, lines 3 and 4); (ii) forming an opening in the tamper-evident structure in which the slider device resides (in Figure 25, slider 9 resides in the left side-cut 122, which is an opening; page

16, last line – page 17, line 7); (iii) providing an area of weakness within the tamper-evident structure (perforations 124 described on page 17, lines 5-7 and shown as a dotted line on Figure 25; page 17, lines 5-8).

## VI. GROUND OF REJECTION TO BE REVIEWED UPON APPEAL

1. Are the drawings properly rejected under 37 C.F.R. §1.83(a) for allegedly failing to disclose “the step of forming an opening in the tamper-evident structure and the step of forming an area of weakness in the tamper-evident structure”?
2. Is Claim 40 properly rejected under 35 U.S.C. §112, first paragraph for allegedly failing “to provide antecedent basis for the tamper-evident structure ‘encasing a first portion of the zipper closure’ and the step of ‘forming an opening in the tamper-evident structure’”?
3. Is Claim 40 properly rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent Nos. 6,273,607, 6,290,390 and 6,347,885, all to Buchman?

## VII. ARGUMENTS

1. Are the drawings properly rejected under 37 C.F.R. §1.83(a) for allegedly failing to disclose “the step of forming an opening in the tamper-evident structure and the step of forming an area of weakness in the tamper-evident structure”?

At the outset, all of the rejections are based on the same unsupported finding of the Office Action, and the reversal of this unsupported finding will lead to the reversal of all of the rejections.

The Office Action apparently contends that there is no “opening” formed in the tamper-evident structure (later language in the claim requires that the slider reside within the opening). It is respectfully but strenuously submitted that the left side cut 122 of Figure 25 is clearly an “opening” in the tamper-evident structure (element 126) in which the slider (element 9) resides.

A definition of “opening” as given by Webster’s New Twentieth Century Dictionary, Second Edition is “an open place or part, a gap, an aperture, a hole or perforation”. It is respectfully but strenuously submitted that the left side cut 122 of Figure 25 clearly is “an open place or part” or “a gap” in the film extension (or header) 126.

Moreover, the Office Action appears to read a sequence of steps into the claim, stating at page 4, last sentence of penultimate paragraph, “By referencing Figure 25, there is no way of telling whether the side-cuts were made in the film extensions prior to the formation of the tamper-evident structure or afterwards as claimed” (emphasis added). There simply is no such recitation of sequence of steps in the claim.

Similarly, it is respectfully but strenuously submitted that the “perforations 124” (see Figure 25, element 124 and page 17, line 5) are clearly an “area of weakness” in film extension (or header 126).

It is respectfully submitted that this objection is overcome.

2. Is Claim 40 properly rejected under 35 U.S.C. §112, first paragraph for allegedly failing “to provide antecedent basis for the tamper-evident structure ‘encasing a first portion of the zipper closure’ and the step of ‘forming an opening in the tamper-evident structure’”?

This rejection is characterized by the Office Action as a “new matter” rejection.

The Office Action at page 4, numbered paragraph 6, line 4, states that Figure 25 does not provide antecedence for a tamper-evident structure “encasing a first portion of the zipper closure”. It is respectfully but strenuously submitted that this is an incomplete quotation. The claim recites “a tamper-evident structure at least partially encasing the zipper closure” [emphasis added]. It is respectfully but strenuously submitted that it is clear from Figure 25 that the film extensions 126 “at least partially encase” the zipper closure.

As stated in the previous section, the left side cut 122 (formed in film extension 126) of Figure 25 clearly discloses “forming an opening in the tamper-evident structure” (recalling that the term “opening” can be construed as an “open place or part” or a “gap”).

It is respectfully submitted that this rejection is overcome.

3. Is Claim 40 properly rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent Nos. 6,273,607, 6,290,390 and 6,347,885, all to Buchman?

This rejection is based on the above 35 U.S.C. §112, first paragraph (“new matter”) rejection. Based on this “new matter” rejection (addressed above), the Office Action apparently accords this application only the benefit of the filing date of July 29, 2003, rather than the correct effective filing date of April 15, 1999 (based on application serial no. 09/292,256, the priority of which is claimed in the present application). The various cited Buchman references, along with U.S. Patent No. 6,290,391 (also to Buchman), from which the presently pending claim copied, all apparently share a priority date of January 18, 2000.

In view of the overcoming of the “new matter” rejection as described in the previous section, it is respectfully submitted that the present application should be accorded the effective filing date of April 15, 1999 thereby overcoming the rejection under 35 U.S.C. §102(e). It is respectfully submitted that the priority of the present application with respect to the Buchman ‘391 reference should be decided by the declaration of interference.



The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald E. Brown", with a stylized flourish at the end.

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## VIII. CLAIMS APPENDIX

Claims 1-39 – (canceled)

40. (new) A method of making a package comprising a package body defining a package interior; a zipper closure comprising a first mating profile and a second mating profile extending along a first edge of the package body, the zipper closure providing access to the interior, a slider device operably mounted on the zipper closure, the slider device interlocking the first mating profile with the second mating profile when the slider device is moved in a first direction and for disengaging the first mating profile from the second mating profile when the slider device is moved in a second opposite direction, and a tamper-evident structure at least partially encasing the zipper closure; the method comprising:

- (a) providing the package body having an interior surface and defining the package interior;
- (b) attaching the zipper closure to the interior surface of the package body;
- (c) mounting the slider device onto the zipper closure;
- (d) forming the tamper-evident structure over the zipper closure and the slider device with the package body by:
  - (i) sealing the package body above the zipper closure;
  - (ii) forming an opening in the tamper-evident structure in which the slider device resides;
  - (iii) providing an area of weakness within the tamper-evident structure.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None